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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**
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12 Gregory Calvin SMITH,

13 Petitioner,

14 v.

15 Kevin CHAPPELL,
16 Warden, San Quentin State Prison,

17 Respondent.

Case Number CV 04-3436 JSW

DEATH-PENALTY CASE

SCHEDULING ORDER

18 The Court is in receipt of the parties' Joint Statement Regarding Case Management, filed
19 on January 31, 2014. The Statement states that petitioner intends to appeal the Court's order
20 denying his second request for a stay and subsequent motion for reconsideration, and thereafter
21 will file a motion for evidentiary hearing. Petitioner filed a Notice of Appeal on February 15,
22 2014.

23 In the interest of efficiency and in light of *Pinholster v. Cullen*, 131 S. Ct. 1388 (2011),
24 the Court directs the parties to proceed as follows instead:

25 A) If petitioner's appeal is successful, the parties shall proceed in accordance with the
26 Ninth Circuit's ruling on petitioner's appeal.

27 B) If petitioner's appeal fails, then within 30 days of its resolution, the parties shall meet
28 and confer to identify claims they agree may be resolved based on the record before the Court.

1 Within fifteen days of meeting and conferring, the parties shall file a joint statement outlining a
2 litigation schedule for briefing the merits of record-based claims. After receipt and review of the
3 joint statement, the Court shall issue a scheduling order. A schedule for resolving remaining
4 claims will be established in a subsequent order.

5 **IT IS SO ORDERED.**

6 DATED: March 27, 2014

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9 JEFFREY R. WHITE
10 United States District Judge
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